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18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA
20

21 MELIZA CRUZ,

22 Plaintiff,

23 v.

24 WALMART INC., a Delaware
25 Corporation; DOES 1 through 50,
26 inclusive,

27 Defendants.
28

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Case No. 2:21-cv-00613-WBS-CKD

**STIPULATION RE: ENTRY OF
PROTECTIVE ORDER AND
[PROPOSED] ORDER**

Action Filed: 2/23/2021
Date of Removal: 4/2/2021
Trial Date: None Set

1 The parties have agreed to and have submitted to the Court, and for good cause
2 shown the Court hereby enters, the following Confidentiality Order:

3 1. This Order shall govern the disclosure of materials designated as
4 Confidential Material in this litigation. Confidential Material, as used in this Order,
5 shall refer to any document or item designated as Confidential or Highly Confidential
6 – Attorneys’ Eyes Only, including but not limited to, documents or items produced
7 during discovery, all copies thereof, and the information contained in such material.
8 Nothing in this Order shall require any party to produce any specific documents or
9 category of documents which a party deems inappropriate for production.

10 **Definitions of Confidential Material**

11 2. Confidential Material, as used in this Order, consists of the following
12 materials and categories of materials:

13 a. Materials relating to any privileged, confidential, or
14 nonpublic information, including, but not limited to, trade
15 secrets, research, design, development, financial, technical,
16 marketing, planning, personal, or commercial information,
17 as such terms are used in the Federal Rules of Civil
18 Procedure (Fed. R. Civ.) (and any applicable case law
interpreting Fed. R. Civ. 26(c)(1)(G)); contracts; non-
public compilations of retail prices; proprietary
information; vendor agreements; personnel files;
claim/litigation information; and nonpublic policies and
procedures shall be deemed Confidential.

19 b. Materials containing corporate trade secrets, nonpublic
20 research and development data, including, but not limited
21 to, cost data, pricing formulas, inventory management
22 programs, and other sales or business information not
23 known to the public; information obtained from a non-
party pursuant to a non-disclosure agreement; and
customer-related Protected Data shall be deemed Highly
Confidential – Attorneys’ Eyes Only.

24 c. Protected Data shall refer to any information that a party
25 believes in good faith to be subject to federal, state or
26 foreign data protection laws or other privacy obligations.
27 Examples of such data protection laws include but are not
28 limited to The Gramm-Leach-Bliley Act, 15 U.S.C. § 6801
et seq. (financial information); and, The Health Insurance
Portability and Accountability Act and the regulations
thereunder, 45 CFR Part 160 and Subparts A and E of Part
164 (medical information). Certain Protected Data may
compel alternative or additional protections beyond those

1 afforded Highly Confidential – Attorneys’ Eyes Only
2 material, in which event the parties shall meet and confer
3 in good faith, and, if unsuccessful, shall move the Court for
4 appropriate relief.

5 The parties shall not designate as confidential information that is already public
6 knowledge.

7 3. The parties agree that such Confidential Material as described in
8 paragraph 2 should be given the protection of an order of this Court to prevent injury
9 through disclosure to persons other than those persons involved in the prosecution or
10 defense of this litigation.

11 **Procedure for Designating Information as Confidential**

12 4. To designate information as confidential, the producing party shall mark
13 Confidential Material with the legend “CONFIDENTIAL” or “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Parties shall submit
15 confidential discovery responses, such as answers to interrogatories or answers to
16 requests for admissions, in a separate document stamped with the appropriate legend
17 designating those responses as Confidential Material. The Receiving Party may make
18 copies of Confidential Material and such copies shall become subject to the same
19 protections as the Confidential Material from which those copies were made.

20 a. Information on a disk or other electronic format (e.g., a
21 native format production) may be designated confidential
22 by marking the storage medium itself (or the native file’s
23 title) with the legend “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The
25 Receiving Party shall mark any hard-copy printouts and the
26 storage medium of any permissible copies of such
27 electronic material with the corresponding legend
28 contained on the original and such copies shall become
 subject to the same protections, as the Confidential
 Material from which those copies were made.

 b. Information disclosed at any deposition of a party taken
 in this action may be designated by the party as confidential
 by indicating on the record at the deposition that the
 information is confidential and subject to the provisions of
 this Order. Alternatively, the party may designate
 information disclosed at the deposition as confidential by
 notifying the court reporter and other parties in writing,
 within fifteen (15) business days of receipt of the transcript,

of the specific pages and lines of the transcript which are designated as confidential. The parties may agree to a reasonable extension of the 15-business-day period for designation. Designations of transcripts will apply to audio, video, or other recordings of the testimony. During such 15-business-day period, the entire transcript shall receive confidential treatment. Upon such designation, the court reporter and each party shall affix the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend to the designated pages and segregate them as appropriate.

5. A producing party may change the confidentiality designation of materials it has produced, as follows: (1) The producing party must give the receiving parties notice of the change by identifying the documents or information at issue. Once notice is given, the receiving party must make good-faith efforts to ensure that the documents or information are accorded treatment under the new designation. (2) Within a reasonable period after giving notice, the producing party must reproduce the documents or information in a format that contains the new designation. (3) If such information has been disclosed to persons not qualified pursuant to paragraph(s) (12-13) below, the party who disclosed such information shall (a) take reasonable efforts to retrieve previously disclosed Confidential Material; (b) advise such persons that the material is Confidential; and (c) give the producing party written assurance that steps (a) and (b) have been completed.

Data Security

6. The Parties agree to provide adequate security to protect data produced by the other party(ies) or by non-parties. This includes secure data storage systems, established security policies, and security training for employees, contractors and experts. Adequate security also includes such measures as data encryption in transit, data encryption at rest, data access controls, and physical security, whether hosted/outsourced to a vendor or on premises. At a minimum, any receiving party subject to the terms of this Confidentiality Order, will provide reasonable measures to protect non-client data consistent with the American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 477R.

Clawback Provisions

7. The production of privileged or work-product protected documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding.

8. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence (FRE) 502(d) and shall be enforceable and granted full faith and credit in all other state and federal proceedings by 28 U.S. Code § 1738. In the event of any subsequent conflict of law, the law that is most protective of privilege and work product shall apply.

9. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

10. If the receiving party has reason to believe that a produced document or other information may reasonably be subject to a claim of privilege, then the receiving party shall immediately sequester the document or information, cease using the document or information and cease using any work product containing the information, and shall inform the producing party of the beginning BATES number of the document or, if no BATES number is available, shall otherwise inform the producing party of the information.

11. A producing party must give written notice to any receiving party asserting a claim of privilege, work-product protection, or other ground for reclaiming documents or information (a "clawback request"). After a clawback request is received, the receiving party shall immediately sequester the document (if not already sequestered) and shall not review or use that document, or any work product containing information taken from that document, for any purpose. The parties shall meet and confer regarding any clawback request.

Who May Receive Confidential and Highly Confidential Information

12. *Confidential Material.* Any Confidential Material and the information contained therein shall be disclosed only to the Court, its staff, in-house counsel and outside counsel of record for each party, and also shall be disclosed on a need-to-know basis only to the parties, counsel's staff personnel, employees of a party to whom disclosure is necessary in connection with the preparation for and trial of this action, and any witnesses in the case (including consulting and testifying experts) as may from time to time reasonably be necessary in prosecution or defense of this action.

13. *Highly Confidential—Attorneys' Eyes Only Material.* Material and information designated as "Highly Confidential—Attorneys' Eyes Only" shall only be disclosed to the Court, its staff, in-house and outside counsel of record for each party, the secretarial, clerical, and paralegal staff of each, and consulting and testifying experts retained by a party in this action.

14. *Restriction on Disclosure to Direct Competitors.* Notwithstanding the foregoing, Confidential Material shall not be disclosed to any current or former employees of, or current or former consultants, advisors, or agents of, a direct competitor of any party named in the litigation. If a Receiving Party is in doubt about whether a particular entity is a direct competitor of a party named in this lawsuit, then before disclosing any Confidential Material to a current or former employee, consultant, advisor, or agent of that entity, the Receiving Party's counsel must confer with counsel for the Producing Party.

15. *Persons Receiving Confidential Information Must Sign Exhibit A.* Counsel for each party shall advise all persons to whom Confidential Material is disclosed pursuant to this Order of the existence of this Order and shall provide all such persons (other than the Court and its staff) with a copy of this Order. Counsel shall also require such persons to execute the Affidavit attached as ***Exhibit A***, prior to the disclosure of Confidential Material.

1 16. *Duties in the Event of Unauthorized Disclosures.* It shall be the
2 obligation of counsel, upon learning of any unauthorized disclosure or threatened
3 unauthorized disclosure of Confidential Information, or any other breach or
4 threatened breach of the provisions of this Order, to promptly notify counsel for the
5 Producing Party. The notification shall be supplemented with reasonable details of
6 the circumstances of the disclosure in order to permit the producing party to
7 understand and take appropriate steps. Each party and its counsel agree to take
8 reasonable and good-faith efforts to contain or limit any breach promptly upon
9 receiving notice of it, and to make reasonable and good-faith attempts to retrieve any
10 unauthorized disclosure of documents or information. This provision does not limit
11 the producing party's entitlement to damages resulting from any breach of this Order.

12 **Authorized Uses of Confidential Material**

13 17. Confidential Material shall only be used for the purpose of litigating the
14 above-captioned lawsuit and may not be used in other lawsuits.

15 18. Persons having knowledge of Confidential Material and information
16 due to their participation in the conduct of this litigation shall use such knowledge
17 and information only as permitted herein, and shall not disclose such Confidential
18 Material, their contents or any portion or summary thereof to any person(s) not
19 involved in the conduct of this litigation.

20 19. If any person having access to the Confidential Material herein shall
21 violate this Order, he/she may be subject to sanctions by the Court and may be liable
22 to pay for the damages caused by his/her violation.

23 **Challenges to the Designation of Confidential Material**

24 20. Any party or interested member of the public may move the Court to
25 modify the designation of any documents or information produced in this litigation
26 (either to include additional protection with respect to confidentiality or to remove a
27 confidential designation). Before making such a motion, the party or an interested
28 member of the public shall first attempt to resolve such dispute with the producing

1 party's counsel. Pending resolution of any challenges to the designation of
 2 documents or information, the material at issue shall continue to be treated as
 3 Confidential Material until ordered otherwise by the Court. The burden shall be on
 4 the party seeking to remove the designation to show that the designation is
 5 inappropriate.

6 **Withholding of Information**

7 21. *Non-relevant Attachments.* The parties will not produce non-relevant
 8 attachments that are attached to relevant emails. When an attachment is withheld
 9 (either for privilege or non-responsiveness), the producing party shall produce a one-
 10 page TIFF image in place of the withheld attachment, stating "Attachment
 11 Withheld", and bearing a sequential BATES number within the family BATES range.
 12 If any attachment to an email contains responsive content, then the cover email shall
 13 be produced for context, regardless of the cover email's responsiveness. The cover
 14 email may be redacted in part to remove sensitive information, as described below.

15 22. *Redactions.* The parties may redact (1) information that is privileged or
 16 protected from discovery as work product or by reason of any other applicable
 17 privilege or immunity; (2) information subject to non-disclosure obligations imposed
 18 by governmental authorities, law or regulation (*e.g.*, protected personal information);
 19 and (3) sensitive, non-relevant information, including but not limited to personally
 20 identifiable information, trade secrets, or information regarding products, data, or
 21 people. Privilege redactions will state, over the redacted portion, "Redacted–
 22 Privileged," and all other redactions will state, "Redacted–Nonresponsive."
 23 Redactions of emails will not redact the names of recipients or the subject line of the
 24 emails, unless the subject line is itself privileged or contains the sensitive information
 25 described above, in which case only so much of the subject line will be redacted as
 26 may be needed. The parties will produce redacted documents in TIFF format with
 27 corresponding searchable OCR text and the associated metadata for the document,
 28 ensuring the redacted content is fully protected from disclosure.

Confidential Material In Filings, Hearings, and Trial

23. *Confidential Material in Filings.* Without written permission from the Producing Party or court order secured after appropriate notice to all interested persons, a party may not file Confidential Material in the public record in this action (or in any other action, such as an appeal). A party that seeks to file under seal any Confidential Material must first obtain an order granting leave to file under seal on a showing of a particularized need. Confidential Material may only be filed under seal in a manner prescribed by the Court for such filings.

24. *Manner of Sealing.* In the event Confidential Materials or portions of transcripts are sealed as confidential by the Court or as described in paragraph (23) above, they shall be filed in an envelope bearing the following designation when deposited:

CONFIDENTIAL

IN ACCORDANCE WITH THE CONFIDENTIALITY ORDER OF THE COURT, THE CONTENTS OF THIS ENVELOPE SHALL BE TREATED AS CONFIDENTIAL AND MUST NOT BE SHOWN TO A PERSON OTHER THAN THE COURT, ATTORNEYS IN THIS CASE, OR TO PERSONS ASSISTING THOSE ATTORNEYS.

25. *Confidential Material in Hearings and Trial.* The provisions of this Order shall not affect, and this Order does not limit, the *admissibility* of Confidential Material (or references to that material) as evidence at trial, or during a hearing or similar proceeding in this action. Prior to using Confidential Material or the information contained therein at any hearing that is open to the public, the party seeking to use the Confidential Material must give at least seven (7) days advance notice to the producing party of the intent to use the Confidential Material so that the producing party may seek an appropriate Court Order to protect the Confidential Material.

Continuing Effect of this Order and Duty to Destroy

26. This Order shall continue to be binding throughout and after the

1 conclusion of this litigation, including all appeals. Within thirty (30) days of
 2 settlement or final adjudication, including the expiration or exhaustion of all rights
 3 to appeal or petitions for extraordinary writs, each party or non-party to whom any
 4 materials were produced shall, without further request or direction from the
 5 Producing Party, promptly destroy all documents, items or data received including,
 6 but not limited to, copies or summaries thereof, in the possession or control of any
 7 expert or employee. This requirement to destroy includes all documents, not only
 8 those documents designated as Confidential Material. The Receiving Party shall
 9 submit a written certification to the Producing Party by the 30-day deadline that (1)
 10 confirms the destruction/deletion of all Confidential Material, including any copies
 11 of Confidential Materials provided to persons required to execute Exhibit A
 12 (Affidavit), and (2) affirms the Receiving Party has not retained any copies, abstracts,
 13 compilations, summaries or any other format reproducing or capturing any of the
 14 Confidential Material. Notwithstanding this provision, outside counsel is entitled to
 15 retain an archival copy of filings, depositions, and deposition exhibits.

16 **Procedure if Confidential Material Is Required to be Produced**

17 27. If any person receiving documents covered by this Order is served with
 18 a subpoena, order, interrogatory, or document or civil investigative demand
 19 (collectively, a “Demand”) issued in any other action, investigation, or proceeding,
 20 and such Demand seeks material that was produced or designated as Confidential
 21 Material by someone other than the Receiving Party, the Receiving Party shall give
 22 prompt written notice by hand or electronic transmission within five (5) business
 23 days of receipt of such Demand to the party or non-party who produced or designated
 24 the material as Confidential Material, and shall object to the production of such
 25 materials on the grounds of the existence of this Order. At the request of the party or
 26 non-party who produced or designated the material as Confidential Material, the
 27 Receiving Party shall refuse to comply with the Demand unless (a) ordered to do so
 28 by a court with jurisdiction over the Receiving Party; or (b) released in writing by the

1 party or non-party who designated the material as Confidential Material. The burden
2 of opposing the enforcement of the Demand shall fall upon the party or non-party
3 who produced or designated the material as Confidential Material. Compliance by
4 the Receiving Party with any order of a court of competent jurisdiction, directing
5 production of any Confidential Material, shall not constitute a violation of this Order.

6 **Application of this Order to Productions by Third Parties**

7 28. This Order may be used by third parties producing documents in
8 connection with this action. Third parties may designate information as Confidential
9 or Highly Confidential – Attorneys’ Eyes Only.

10 29. If a third party produces (or intends to produce) documents and does not
11 designate (or does not intend to designate) those documents as Confidential Material,
12 then any party to this action may seek to designate that third party’s documents or
13 categories of documents as Confidential Material. In that case, it will be the burden
14 of the party seeking protected status to move for a court order designating the
15 materials as Confidential Material after the parties confer.

16 30. In the event additional parties join or intervene in this litigation, the
17 newly joined party(ies) shall not have access to Confidential Material until its/their
18 counsel has executed and, at the request of any party, filed with the Court the
19 agreement of such party(ies) and such counsel to be fully bound by this Order.

20 31. The parties agree that nothing in this Order shall be deemed to limit the
21 extent to which counsel for the parties may advise or represent their respective
22 clients, conduct discovery, prepare for trial, present proof at trial, including any
23 document designated Confidential Material as set forth herein, or oppose the
24 production or admissibility of any information or documents which have been
25 requested.

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1 32. This Order shall remain in full force and effect until such time as it is
2 modified, amended, or rescinded by the Court.

3 Dated: August 25, 2021
4

5 /s/ Ruth Gewing
6 Jared Beilke, Esq.
7 Ruth Gewing, Esq.
8 JML Law, APLC
9 Attorneys for Plaintiff
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/s/ Cory J. King
Cory J. King
Jenny Choi
Mohammad B. Shihabi
Ford & Harrison LLP
Attorneys for Defendants

~~[PROPOSED]~~ PROTECTIVE ORDER

GOOD CAUSE APPEARING, and with the additional recitation that a Party that seeks to file under seal any Confidential Material must comply with Eastern District of California Local Rule 141, the Court hereby approves this Stipulation and Orders the parties to conform to the terms and conditions set forth herein.

IT IS SO ORDERED.

Dated: September 2, 2021



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MELIZA CRUZ,

Plaintiff,

v.

WALMART INC., a Delaware
Corporation; DOES 1 through 50,
inclusive,

Defendants.

Case No. 2:21-cv-00613-WBS-KNJ

**AFFIDAVIT OF COMPLIANCE
WITH CONFIDENTIALITY ORDER**

Action Filed: 2/23/2021

Date of Removal: 4/2/2021

Trial Date: None Set

1. My name is _____. I live at _____.
I am working on behalf (or at the direction and engagement) of _____.

2. I am aware that a Confidentiality Order has been entered in the above-captioned lawsuit. A copy of this Confidentiality Order has been given to me, and I have read and understand the provisions of same.

3. I acknowledge that documents and information designated as confidential and/or highly confidential pursuant to such Confidentiality Order ("Confidential Materials") are being disclosed to me only upon the conditions that I agree (a) to be subject to the jurisdiction of this Court, and (b) to comply with that Order. I hereby agree to abide by such Order, subject to all penalties prescribed therein, including contempt of Court, for disobedience of said Order. I promise that the documents and information given confidential treatment under the Confidentiality Order entered in

1 this case will be used by me only to assist counsel for the parties in preparing for
2 litigation of the above-captioned matter. I understand that any use of such
3 Confidential Material in any manner contrary to the provisions of the Confidentiality
4 Order may subject me to the sanctions of this Court for contempt and to liability for
5 any damages caused by my breach of the Confidentiality Order.
6

7
8 4. I shall not disclose nor permit to be reviewed or copied said Confidential
9 Materials, or any information derived from, by any person other than the parties and
10 counsel for the parties or members of their staff.
11

12 5. Within 30 days after the above-captioned lawsuit ends in a final non-
13 appealable order, I agree to destroy all Confidential Materials in my possession.
14

15 DATED: _____, 20____

16 _____
17 Signature

18 _____
19 Printed Name
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